OPINION DELIVERED IN THE COURT BELOW TO BE REVIEWED

The opinion delivered in the United States Court of Claims is No. 69-61, decided October 15, 1965, and is set out *infra* in the appendix hereto at page 1(a).

JURISDICTION

As grounds on which to invoke jurisdiction of this Court, petitioners rely upon Title 28, U.S. Code, Section 1255, and allege and verily believe that the special and important reasons calling inexorably for a grant of review on writ of certiorari in the sound judicial discretion of this Court within the meaning of Rule 19 are:

1. The opinion of the Court below decides an important question of federal law which has not been, but should be, settled by this Court, to wit, whether the Department of Agriculture at the behest of the Department of State can ignore, violate and disregard an act of Congress which in terms specifically directs the Commodity Credit Corporation to use its existing powers "immediately" upon enactment "to encourage the export of cotton by offering to make cotton available at prices not in excess" of world prices, no matter how bona fide be the reasons for pursuing a policy different from that adopted by Congress. Said opinion below decides a second important question of federal law which has not been, but should be, settled by this Court, to wit, whether a barter contractor with the Commodity Credit Corporation who relies in good faith on compliance by the Department of Agriculture with a specific cotton-pricing directive of Congress suffers a deprivation of property without just compensation, when the directive is ignored and

cotton is not offered to be made available at world prices, but at a price 25 per cent above the statutory price, when the contractor has acquired surplus industrial diamonds for said contract, and has no freedom of choice except to take a loss on the surplus diamonds or take a loss on the over-priced cotton.

QUESTIONS PRESENTED FOR REVIEW

1. Can the Department of Agriculture ignore Section 203 of the Agricultural Act of 1956 (7 U.S.C. 1853) which provides in pertinent part:

> "the Commodity Credit Corporation is *directed* to use its existing powers and authorities *immediately* upon the enactment of this Act to encourage the export of cotton by offering to make cotton available at prices *not in excess* of the level of prices at which cottons of comparable qualities are being offered in substantial quantity by other exporting countries." (Emphasis supplied)

and refuse to offer to make cotton available at the statutory price to a barter contractor who has in reliance on said statute agreed to exchange industrial diamonds to be priced by the Government in exchange for cotton having "equivalent total exchange value," and instead secretly price the cotton 25 per cent above the world price?

2. Does a barter contractor who acquires industrial diamonds surplus to his commercial requirements and enters into a barter agreement whereby the Commodity Credit Corporation undertakes (1) to value his diamonds, and (2) give him in exchange CCC-owned cotton having equivalent "exchange value," suffer a taking of his property without just compensation, when

the CCC refuses to make the cotton available at the statutory world price, but instead secretly and arbitrarily prices said cotton 25 per cent above the statutory price, where the contractor has acquired the surplus diamonds and agreed to the Government's valuation of the diamonds in good faith reliance on a specific Congressional directive that such barter cotton will be made available at a price not in excess of the world price?

3. Does an industrial diamond importer who, in reliance on an Act of Congress and a stated policy of the Department of Agriculture, acquires diamonds surplus to his commercial requirements for the purpose of entering into a barter contract with the Commodity Credit Corporation, according to the terms of which the CCC will place an exchange value on his said diamonds and make available to him in exchange therefor CCC-owned cotton of an equivalent exchange value, suffer a deprivation of due process of law under the Fifth Amendment when the CCC refuses to make said exchange cotton available at the world price, as directed by an Act of Congress, and instead secretly and arbitrarily prices said cotton administratively at 28.30 cents per pound, approximately 25 per cent above the statutory price?

STATUTES INVOLVED

1. Section 203, Agricultural Act of 1956, 70 Stat. 199; 7 U.S.C. Para. 1853. (Set forth at page 30a appendix hereto in pertinent part).

2. Section 303, Agriculture Trade Development Act of 1954, 7 U.S.C., Para. 1692 (set forth at page 24a appendix hereto in pertinent part).

CONSTITUTIONAL PROVISIONS INVOLVED

Article II

Section 1. "The executive Power shall be vested in a President of the United States of America. * * *."

Section 3. "* * * he shall take Care that the Laws be faithfully executed, * * *."

Amendment 5

"No person shall be * * * deprived of * * * property, without due process of law; nor shall private property be taken for public use, without just compensation."

STATEMENT OF CASE

Petitioners are in the business of acquiring, classifying, and selling industrial diamonds. (Fdg. 1, Appendix p. 18a)

By letter dated December 24, 1958, the U.S. Department of Agriculture invited petitioners to make barter offers of industrial diamonds in excess of the requirements of their normal customers in exchange for Commodity Credit Corporation-owned agricultural commodities for export to foreign markets. (Fdg. 2, Appendix p. 18a)

On December 26 and 27, 1958 and January 26, 1959, petitioner Parser made offers of industrial diamonds valued by the Government at $1,870,692.62. (Fdg. 3, 18, 9, 59, Appendix p. 21a, 44a, 27a, 93a) On December 31, 1958 petitioner Rough Diamond offered industrial diamonds valued by the Government at $4,751,958.94 (Fdg. 4, 59, Appendix p. 22a).

The CCC invited petitioners to offer to barter surplus industrial diamonds for CCC-owned cotton under

authority given the Secretary of Agriculture in Section 303 of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1692) "to barter * * * agricultural commodities owned by the Commodity Credit Corporation for * * * strategic * * * materials * * * the United States does not domestically produce." (Fdg. 6, Appendix p. 24a)

The Government's letter inviting offers from petitioners provided "the * * * exchange value of industrial diamonds offered will be determined by a Government appraiser * * * whose decision shall be final." (Fdg. 2, Appendix p. 18a) It required a "letter of credit performance guarantee of 1 per cent of the total value of stones offered to assure delivery of * * * diamonds." (Fdg. 2, Appendix p. 18a)

In order to solve the surplus cotton problem and assure that offerers would select cotton as the agricultural commodity to be exchanged for diamonds, Congress established a competitive pricing standard for CCC-owned cotton in Section 203 of the Agricultural Act of 1956 (7 U.S.C. 1853) by providing:

> "the Commodity Credit Corporation is *directed* to use its existing powers and authorities *immediately* upon the enactment of this Act to *encourage* the export of cotton by offering to make cotton available at prices *not in excess* of the level of prices at which cottons of comparable qualities are being offered in substantial quantity by other exporting countries." (Fdg. 13, Appendix p. 30a) (Emphasis supplied)

On March 16, 1959, April 3, 1959, and May 12, 1959, the CCC notified petitioner Parser that it accepted $1,866,830 worth of diamonds "to be exchanged for

CCC-owned cotton having *exchange value* of" that amount. (Fdg. 25, 29, 187, Appendix p. 57a, 63a) On the same day it sent a similar notification to petitioner Rough Diamond accepting its "offer of industrial diamonds from England * * * value of stones deliverable shall be $4,740,000 * * * to be exchanged for CCC-owned cotton *having equivalent total exchange value:*" (Fdg. 18, Appendix p. 44a) (Emphasis supplied) The acceptances of petitioners' offers were conditioned on export of the cotton by July 31, 1959, the last day of the 1958-1959 cotton marketing year. (Fdg. 14, 18, 26, 40, Appendix p. 35a, 44a, 58a, 70a)

On April 6, 1959 petitioner Rough Diamond confirmed CCC's acceptance of its offer. (Fdg. 26, Appendix p. 44a) On March 20, 25, April 9, May 21, and June 1959, petitioner Parser confirmed CCC acceptances (Fdg. 21, 23, 25, 28, 31, 35, Appendix p. 49a, 55a, 57a 60a 63a 65a) of its offers.

Upon acceptance of petitioners' offers by CCC, the transaction became firm, but was subject to "a mutually agreeable contract containing *all of the terms and conditions upon which such barter would be made.*" (Fdg. 19 Appendix p. 46a) (Emphasis supplied)

Petitioners acquired the CCC-owned cotton exchanged for their excess industrial diamonds during the period March 18-July 14, 1959 (Fdg. 38, Appendix p. 67a). There were 18,619,500 pounds (37,239 500-lb. bales) of CCC-owned cotton delivered to Rough Diamond, and 7,260,000 pounds (14,520 500 lb. bales) to plaintiff Parser. (Fdg. 54, Appendix p. 83a)

However, instead of "offering to make cotton available at prices not in excess of the level of prices at

which cottons of comparable qualities (were) being offered * * * by other exporting countries," as required by Congress in Section 203 of the Agricultural Act of 1956, (Fdg. 13, Appendix p. 30a), the Secretary of Agriculture in early May of 1958 had, through administratively confidential action, and without public notice (Fdg. 13, Appendix p. 30a) established a minimum floor price of 28.30 cents per lb. for cotton, which was 5 cents to 7 cents per lb. higher than the price of comparable cotton in England and the world market. (Fdg. 11, Appendix p. 28a) The CCC-fixed minimum price on its cotton "was never * * * publicly announced." This confidential minimum price was not varied during the marketing year since the world price prior to the 1958-59 marketing year remained constant and the U. S. cotton was competitive within the meaning of Section 203. (Fdg. 13(b), Appendix p. 31a)

However, at the time petitioners were required to acquire and ship CCC-owned cotton (prior to July 31, 1959 by the terms of the agreements) "the prices at which most grades of cotton were being offered in world markets by other cotton exporting countries became lower than the prices at which comparable growths by CCC-owned cotton could, considering CCC's minimum price, be offered and were being offered." The price differential was 5 cents to 7 cents per lb. (Fdg. 13(b), Appendix p. 31a)

Despite the CCC's policy of secret minimum pricing, cotton merchants had learned to "range" their bids on the first two bid openings so as to determine the non-public CCC minimum price on cotton within the first month of the marketing year (which commences Aug.

1). When the world cotton price decreased in mid-December 1958, plaintiffs assumed that the Department of Agriculture would obey the explicit directive for immediate competitive world pricing in section 203 of the 1956 Agricultural Act and that the CCC price would be immediately adjusted downward to meet the price criteria of Section 203, i.e., the competitive world price. (Fdg. 21, Appendix p. 49a) The Secretary of Agriculture had officially stated he would vary the price "monthly" if necessary to carry out the law. (Fdg. 19, Appendix p. 46a) The Assistant Secretary of Agriculture had explained to the House Committee on Agriculture that the cotton price would be reduced to the competitive level, and adjusted every 30 days thereafter (Fdg. 40, n. 4, Appendix p. 70a), in the same way that the CCC priced wheat and other agricultural commodities in the barter program, (Fdg. 17, Appendix p. 42a) to keep prices competitive.

Petitioner Rough Diamond had received 2 additional 10 day extensions of time to April 8, 1959 within which to confirm the CCC acceptances of their offers to exchange industrial diamonds for cotton having equivalent exchange value. (Fdg. 18, 13(b), Appendix p. 44a, 31a) Although both petitioners had been seeking to determine since March 20, 1959 (Fdg. 21(b), 28(a), Appendix p. 50a, 60a) when CCC would obey Section 203, no answer had been received by the April 8 confirmation deadline. (Fdg. 27(a), Appendix p. 59a) Petitioner Rough Diamond was compelled to confirm, or risk the 1% penalty letter of credit (Fdg. 2, Appendix p. 18a), the arbitrary and unilateral forfeiture procedures of the CCC document entitled "Transactions Prior to Signing Barter Contracts" (Fdg. 19(a), Appendix p. 46a), and the 1% liquidated damages and 7½% liquidated damages penalties of

the proposed barter contract. Also, they would be left with an inventory of surplus (Fdg. 54, Appendix p. 83a) diamonds accumulated specifically in response to a government assurance of need for strategic requirements of industrial diamonds in barter for agricultural commodities in reliance on the guarantee of competitive world cotton pricing provided in Section 203 of the Act.

Petitioner Rough Diamond confirmed and on April 9, 1959, one day after the confirmation deadline, received notice CCC would not abide by Section 203. (Fdg. 27(a), Appendix p. 59a) The lack of *bona fides* of the Department of Agriculture is clearly revealed in this deceptive timing of its letter to arrive *after* April 8, 1959, the confirmation date. (Fdg. 27, Appendix p. 59a)

Thereafter petitioners were compelled to take down CCC-owned cotton at the unlawful minimum price of 28.30¢ per lb. (Fdg. 18(b), Appendix p. 45a) in order to meet the export date of July 31, 1959, and avoid the above-referred to penalties, or in the alternative suffer a loss on the approximately $7 million of diamonds acquired in excess of needs for the barter program.

As a result, petitioners received under-deliveries of cotton, or were overcharged on the cotton they did acquire—$1,249,368.45 as to Rough Diamond, and $487,146.00 as to Parser, (Fdg. 59, Appendix p. 93a).

In September 1959 CCC submitted contracts to petitioners purporting to embody the barter agreements entered into in the exchange of correspondence. (Fdg. 42, 45, Appendix p. 73a, 74a) Both petitioners returned the formal contracts unsigned because they

varied substantially from the original agreements under which petitioners were to receive cotton of the same exchange value at the world price (Section 203 of the Act) as the value of the diamonds established by the Department of Agriculture. (Fdg. 43, Appendix p. 73a) They were later forced to sign under protest to avoid severe penalties or an alternative loss on the excess diamonds acquired for barter. (Fdg. 50, 51, 52, 53, Appendix p. 79a, 81a, 83a)

On June 13, 1960, petitioner Rough Diamond presented its claim to the Comptroller General (Fdg. 55, Appendix p. 88a), who on November 22, 1960 ruled that he had no jurisdiction to settle claims arising out of CCC barter transactions. (Fdg. 57, Appendix p. 91a) Thereafter plaintiffs appealed pursuant to 28 U.S.C. 1491 to the United States Court of Claims, whose opinion is sought to be reviewed on certiorari as requested herein.

ARGUMENT AMPLIFYING REASONS RELIED ON FOR ALLOWANCE OF WRIT

The important questions of federal law which have not been, but should be, settled by this Court, and which were decided by the court below are framed in the questions presented hereinabove. In amplification of the reasons justifying the grant of a writ of certiorari to review the U. S. Court of Claims decision herein, petitioners direct the Court's attention to *Swift Company* v. *U. S.*, 111 U.S. 22, wherein this Court ruled as far back as 1883 that where a party who is required by executive agents of the Government to pay a sum for property greater than that established by Congress, he is entitled to recover the overpayment in the U. S. Court of Claims, provided the

overpayment was involuntary. And in that decision the Court made it clear that such formalities as objection, notice or protest are not necessary to make a payment involuntary. In the *Swift* case, *supra,* the Court recognized the fact that in dealing with the Government, a private citizen is not on the same footing:

> "The parties were not on equal terms. The appellant had no choice. The only alternative was to submit to an illegal exaction, or discontinue its business. It was in the power of the officers of the law, and could only do as they required. Money paid or other value parted with, under such pressure, has never been regarded as a voluntary act * * *."

In *Maxwell* v. *Griswold,* 10 How. 242-256 (1850), this Court had earlier treated with a similar problem of distinguishing voluntary from involuntary payments to the Government, and stated:

> "Now, it can hardly be meant in this class of cases, that, to make a payment involuntary, it should be by actual violence, or any physical duress. It suffices, if the payment is caused on the one part by an illegal demand, and made on the other part reluctantly and in consequence of that illegality * * *."

This Court had the same question of distinguishing an involuntary payment before it in *U. S.* v. *Edmonston,* 181 U.S. 500 (1901), and reaffirmed the *Swift* case, but found voluntariness on positive evidence in the *Edmonston* situation:

> "No one can read the findings without recognizing that the transaction between the officials of the land office and the claimant was at the time ac-

> ceptable to both and without any complaint on the part of the petitioner. * * * It may be a rightful or wrongful demand. * * * If he pays without objection, notice or protest it is simply * * * a voluntary payment."

In the opinion of the U. S. Court of Claims which petitioners seek to have reviewed on certiorari, that court completely ignores this Court's rule in the *Swift* case, and repeatedly characterizes petitioners' involuntary agreements as "voluntary" so as to bring the case within this Court's *Edmonston* rule, supra, barring recovery of voluntary over-payments The opinion below ignores its own findings of fact as set out in its opinion (See Findings 19, 47, 48, 49, and 51 at Appendix, pages 46a, 77a, 78a, and 79a). The error of the court below lies not only in wrongly deciding an important question of federal law, but also in deciding a federal question in a way in conflict with applicable decisions of this Court, such as *Swift Company* v. *U. S., supra,* and *Maxwell* v. *Griswold, supra.* Unless this Court corrects the error, justice will not be done.

The court below compounds its error by reviewing its own decisions in *A. H. Bull S. S. Co.* v. *U. S.*, 123 Ct. Cl. 520; *Southeastern Oil Florida Inc.* v. *U. S.*, 127 Ct. Cl. 409, cert. den. 348 U.S. 834; *Clapp* v. *U. S.*, 127 Ct. Cl. 505, cert. den., 348 U.S. 834; *Nautilus Shipping Corp.* v. *U. S.*, 141 Ct. Cl. 391; *Sprague S.S. Co.* v. *U. S.*, 145 Ct. Cl. 642; *Suwanee S.S. Co.* v. *U. S.*, 150 Ct. Cl. 331, and stating:

> "This court held that buyers who had been charged more than the prices set by Congress could recover the excess, even though they had entered into contracts to pay those higher sums. * * * The holding was that the parties could not, by

agreement, change the terms prescribed by the statute for the sale of the ships."

The court below justifies its not following the *Edmonston* rule barring recovery of voluntary payments in the above cases by an entirely fabricated and imaginary speculation as to Congressional intent in the underlying legislation. The court below completely ignores that certiorari was denied in two cases cited above where it had allowed recovery of overpayments. Whatever may be the confusion among the judges of the U. S. Court of Claims on this point of voluntariness, and the *Edmonston* and *Swift* rules, two things are absolutely and unequivocally clear in the record contained in the opinion under review:

1. The cotton taken down by petitioners under the barter agreement with the Department of Agriculture was involuntary and over specific protest against pricing in excess of the statutory price under Section 203 of the 1956 Act, and

2. The legislative purpose of Congress to encourage export of cotton by directing the CCC to make such cotton available *immediately* at the world price is plain to see for any one with a mind open to persuasion.

The failure and refusal of the court below to follow the decisions of this Court or the specific language of the 1956 Act raises serious constitutional questions under Article II and Amendment 5, as set forth hereinafter. Surely due process contemplates that lower courts will apply the law as determined by the Supreme Court and will by judicial decree give effect to the policies specifically provided in an act of Congress.

Lower courts under the Constitution can no more trespass upon the legislative power confided to Congress therein, than can the President and his agents. E.g., *Youngstown Sheet & Tube Co.* v. *Sawyer,* 343 U.S. 579. Yet when a lower court ignores or misreads a plainly stated legislative policy clear in the words of a statute and its legislative history, it changes its function from decisional to legislative, and violates the concept of due process.

In the *Youngstown* case, *supra,* this Court said of the President:

> "In the framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad. And the Constitution is neither silent nor equivocal about who shall make laws which the President is to execute. The first section of the first article says that "All legislative Powers herein granted shall be vested in a Congress of the United States. * * *."

Certainly the reasoning and conclusion of this Court as to the President is equally applicable to the lower court herein to the extent it so far ignores the policy of an act of Congress clearly stated as to nullify the law or amend it substantially in its operation.

With but few minor exceptions, the Findings of Fact in the opinion of the Court below contained herein at Appendix p. 18a comprehensively outline the situation giving rise to petitioners' claims. The basic problem for solution by this Court is whether or

not defendant complied with the direction of Congress respecting the pricing of CCC-owned cotton exchanged by the Secretary of Agriculture for industrial diamonds in furtherance of barter transactions under Section 303 of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1692) authorizing exchanges of agricultural commodities for strategic materials.

Among the various agricultural commodities involved in barter transactions, Congress established a special pricing formula for cotton.

Section 203 of the Agriculture Act of 1956 (7 U.S.C. 1853) provides as follows:

> "*Section 203. Export Sales Program for Cotton.* In furtherance of the current policy of the CCC of offering surplus agricultural commodities for sale and export at *competitive world prices,* the CCC is *directed* to use its existing powers and authorities *immediately* upon the enactment of this Act to encourage the export of cotton by *offering to make cotton available* at prices *not in excess* of the level of prices at which cottons of comparable qualities are being offered in substantial quantities by other exporting countries * * *." (Emphasis supplied)

Under accepted rules of construction, words in a statute must be given their plain meaning. Nothing can be clearer than that Congress intended for the CCC immediately to price cotton at the world competitive price, and was so concerned that there be no mistake about the Congressional purpose involved, it left no discretion to the Secretary of Agriculture. The CCC by the very words of the statute was "directed" to price cotton "immediately" at prices "not in ex-

cess of the level of prices" of competitive cotton being sold by other exporting countries. The legislative history of this provision of the law is referred to commencing at page 2865 of the Congressional Record for March 3, 1959. As set forth in the Congressional Record, Congressman Whitten stated,

> "This year the Secretary (of Agriculture) has admittedly been refusing to offer Agricultural cotton for sale in world trade on a competitive basis."

In a colloquy with the Secretary of Agriculture, cited in the legislative history and referring to testimony of the Secretary on February 3, 1959, before the House Committee on Agriculture, Mr. Whitten asked,

> "Do you agree that the Congress passed this Act (Sec. 203) to make it compulsory that you sell cotton competitively * * *?"

The Secretary of Agriculture answered "Yes, of course, the Congress passed the legislation * * *."

As set forth by Congressman Whitten, the record of hearings leading up to Section 203 of the Agriculture Act of 1956 shows that in 1956 the House Appropriations Committee disclosed that the Secretary of Agriculture was holding an umbrella over big U.S. investors in Mexico and South and Central America cotton production by withholding U.S. cotton from world markets at competitive prices. In order to correct this policy of the Department of Agriculture with which Congress thoroughly disagreed, Congress passed the Agricultural Act of 1956, generally known as the Eastland Act. Even after passage of the 1956 Act, the Executive Branch of the Government continued

to thwart the policy of Congress, as set out in the Congressional Record. On February 3, 1959, under strong pressure from the House Appropriations Committee and others, the Secretary of Agriculture agreed to offer cotton on a competitive basis and to carry out Section 203 of the Agricultural Act of 1956.

Thereafter on February 21, 1959 a story appeared in the Washington Star regarding a recent visit of President Eisenhower to Mexico and a communique that issued following his meeting with President Lopez Mateos of Mexico, which stated that there was agreement that there should be cooperation and consultation between the two governments on the disposal of cotton. This might mean that Mexico would be protected in the future against sale abroad of U.S. cotton surpluses. Congressman Whitten stated in connection with this communique:

> "I cannot believe even the President would feel he had the right to ignore the law, keep our cotton away from the needy people of the world or to help Anderson Clayton and other American firms in their operations in Mexico."

The Court below has itself recognized that:

> "Congress is the policy-making branch of our Government." *Stringer* v. *U. S.*, 117 Ct. Cl. 30, 90 F. Supp. 375, 380.

Article II of the federal Constitution commands the President, and, through him, the Executive Officers he appoints to:

> "take care that the laws be faithfully executed"

Certainly, observance of the Constitution and faithful execution of the laws are responsibilities of the

President and the Secretary of Agriculture, regardless of how high-minded and bona fide their difference with Congress as to what policy the Government should follow. This Court should be most zealous to strictly enforce the checks and balances and separation of powers among the three coordinate branches of the federal Government intended by the people when they ratified the Constitution in 1789. Gradual erosion of the federal system occurs when courts permit the Executive Branch to encroach on the powers or responsibilities of the legislative branch.

Daniel Webster in a speech in the U.S. Senate on May 18, 1840, said,

> "* * * The Constitution owes its whole force and authority to its ratification by the people, and the people judge of it by the meaning most apparent on its face. How particular members may have understood its provisions, if it could be ascertained, would not be conclusive. The question would still be, How did the people understand it? And this can be decided only by giving their usual acceptation to all words * * *." (Webster's Works, Vol. V, p. 3, Little Brown & Co., Boston 1877)

Nothing is plainer on the face of the federal Constitution than that Congress is the policy-making body empowered to legislate, and that the President and his appointees must faithfully execute the laws enacted by Congress and the policies those laws are intended to implement. *Youngstown Sheet & Tube Co.* v. *Sawyer,* 343 U.S. 579.

No Court can have a reasonable doubt about the meaning of Section 203 of the Act. The Comptroller General of the United States in an opinion which may

be found on page 2365, Part 4 of the hearings on The Department of Agriculture and Farm Credit Administration Appropriation Bill of 1960 stated that the failure of the Secretary of Agriculture and the CCC to sell cotton in world markets at a competitive price was in violation of the law. He stated,

> "This action, in our opinion, does not comply with the requirements of Section 203 of the Agriculture Act of 1956."

Again in its May 1959 report to Congress of its annual audit of the CCC, the U.S. General Accounting Office stated:

> "In our opinion, the failure of CCC to make cotton available for export at prices competitive in the world market during the 1958-1959 marketing year is contrary to Section 203 of the Agricultural Act of 1960."

The policy conflict between the Executive Branches of the Government and Congress which led up to Section 203 of the 1956 Act is set forth in some detail at page 7615 of the Congressional Record for May 18, 1956, where Senator Smith of New Jersey attempted to strike from the pending bill the so-called Eastland Amendment (Section 203).

This Court should take judicial notice of the fact that Senator Smith argued that as a member of the Foreign Relations Committee he had been requested by the State Department to present its position on the Eastland Amendment, which was in opposition to Section 203 of the pending bill. The State Department memorandum as set forth in the Congressional Record

provided with respect to proposed Section 203 of the legislation:

> "This section, if enacted into law, could seriously injure the economics of Mexico, Brazil, Turkey, Pakistan, Peru, Egypt, and other countries, and hence jeopardize our relations with them. Section 203 would require the sale of upland cotton in world markets at prices no higher than those offered by other exporting countries for comparable quality."

Senator Eastland responded that Section 203 of the bill was made necessary by the fact that American cotton was the only farm product not priced competitively by the CCC. In explanation of Section 203, Senator Eastland said,

> "There is no reason in the world why that situation should exist and why a great segment of our cotton production should not be priced at competitive prices. There are 4 or 5 international cotton houses with money invested in Latin America, and I am ashamed to say that they have too much influence with our State Department. Their whole purpose is to protect their investments."

This legislative history contains all of the policy arguments for and against the mandatory pricing criteria contained in Section 203. Prior to a vote on his amendment, Senator Eastland was granted unanimous consent to have printed in the Congressional Record at page 7617 of the May 18, 1956 issue, an explanation of the legislative intent of Section 203 of H.R. 10875, which ultimately became the 1956 Act. That explanation is as follows:

> "Section 203 contains three general intents. For this reason, this explanation of legislative intent is divided into three parts.

1. The first part directs the Commodity Credit Corporation to use its existing powers and authorities immediately upon enactment of the act to encourage the export of cotton by offering to make cotton available at prices not in excess of the prices at which cotton of comparable qualities are being offered by other exporting countries.

With respect to this first part, it is the intent that the Commodity Credit Corporation shall make cotton available at the level of prices at which cottons comparable to those produced in the United States are being offered by other exporting countries in substantial quantities.

The Commodity Credit Corporation, in making cotton available at competitive prices, could provide either for the sale of CCC cotton for export at competitive world prices or for a cash export subsidy on United States cotton sufficient to make it competitive in world markets.

It is also the intent of this part that the Commodity Credit Corporation shall make cotton available at competitive prices *immediately* upon *enactment of this act,* but that it shall be discretionary with the Secretary of Agriculture to withhold actual deliveries of CCC cotton until August 1, 1956. (Emphasis Supplied)

2. The second part provides that during the marketing year beginning August 1, 1956, the Commodity Credit Corporation is further directed to encourage the export of cotton by offering to make cotton available at prices not in excess of the minimum prices at which cottons of comparable qualities were sold under the special cotton export program announced on August 12, 1955.

With respect to the second part, it is the intent that under any Commodity Credit Corporation sales program during this period the Commodity Credit Corporation shall accept bids, if such bids

are the highest received for any particular lot of cotton, which are equal to or above the minimum sales price of 25½ cents per pound, basis Middling fifteen-sixteenth of an inch at ports, as established by the Commodity Credit Corporation under the special cotton export program announced on August 12, 1955, and completed on March 2, 1956.

Under any Commodity Credit Corporation program for the sale of CCC cotton for export at competitive world prices during the marketing year beginning August 1, 1956, it is also the intent of this second part that the Commodity Credit Corporation is directed to accept all bids at prices ranging down to the previous 'floor' price of 25½ cents. It is not intended, however, that the Commodity Credit Corporation should not make cotton available at lower prices if it is necessary to meet competition. Neither does it preclude the Commodity Credit Corporation from accepting the higher of several bids for the same particular lot of cotton above the 'floor' price of 25½ cents.

Under any Commodity Credit Corporation program for the payment of a cash export subsidy on cotton exported during the marketing year beginning August 1, 1956, it is also the intent that the amount of such subsidy shall be not less than the spread between 25 cents (minimum sales prices at port of 25½ cents minus one-half cent allowance for average cost of transportation from interior origin points to port) per pound and the average price of Middling White fifteen-sixteenths inch cotton on the 14 designated spot cotton markets.

This section provides that for the marketing year beginning August 1, 1956, cottons of qualities other than those sold under the special CCC cotton export program announced August 12, 1955 shall be made available for export at the minimum prices at which cottons were sold under such pro-

gram with appropriate adjustments for differences in quality.

3. The third part provides that such quantities of cotton shall be sold as will reestablish and maintain the fair historical share of the world market for United States cotton, said volume to be determined by the Secretary of Agriculture.

With respect to this third part, it is the intent that the Secretary of Agriculture will take whatever steps are necessary to reestablish and maintain our fair historical share of the world market for United States cotton. The Secretary in statements to the press has indicated what our fair share of the world market should be, and it is the intent that the Secretary of Agriculture should utilize all his powers to achieve such a goal as rapidly as possible and in an orderly manner. This goal, however, should be increased proportionately as world consumption of cotton increases."

The Comptroller General of the United States on various occasions has ruled that the mandate and direction of Section 203 is absolute. For example, on May 29, 1959, the Comptroller General wrote a letter to then Speaker of the House Sam Rayburn, referring to Decision B-114824 of the Comptroller General, which stated,

"The prices at which CCC has made cotton available for export * * * have been maintained at levels in excess of world competitive prices. This action, in our opinion, does not comply with the requirements of Section 203 of the Agriculture Act of 1956."

Findings 56(b) and (c) of the opinion of the Court below (Appendix p. 90a) reflect the interpretation of

Chairman Cooley of the House Agriculture Committee that CCC failed to comply with Section 203 of the 1956 Act during the 1958-1959 marketing year in which petitioners had to export CCC-owned cotton.

Again, on November 23, 1960, the Comptroller General ruled in Decision B-142771:

> "We do not agree with the position of CCC that Section 203 has no application to barter transactions. On the contrary, we feel that the equivalent value of the bartered surplus cotton should be determined under the pricing criteria of Section 203, since to hold otherwise would, in our opinion, be contrary to the interest of the Congress in enacting Section 203."

The real problem presented to the Court in this case is the fundamental relationship between the Executive and Legislative Branches of our national Government, within the framework of the federal Constitution.

The legislative history and the debates in Congress make it clear beyond cavil that Congress had a specific policy in mind respecting Section 203 of the 1956 Act, i.e. a statutory direction to the CCC immediately to price CCC-owned cotton at the world competitive price for purposes of either sale or barter transactions. The CCC had continued, despite previous policy statements by Congress respecting this accumulated surplus cotton, to withhold it from the world market in order not to compete with the export of cotton by American interests who had holdings in foreign countries. Petitioners should not be the victims of this tug of war.

In the case at bar, the record clearly shows that shortly prior to the time when petitioners entered into

the barter transactions with the Department of Agriculture to exchange industrial diamonds for CCC-owned cotton, the Secretary of Agriculture said he would change the price of cotton periodically or even monthly, if necessary, to meet prices of cotton per Section 203 (Fdg. 17, Appendix p. 42a) the command and direction of the statute was "immediately", not monthly, not periodically. As outlined, the opinion below contains a statement by the Assistant Secretary respecting the 1958-1959 cotton marketing year, as follows:

> "We continued in the marketing year just ended (July 31, 1958) the same policy that we had established under which we had sold these sizeable quantities in the years previous, but we found that about midway or 2/3rds of the way through the marketing year, other countries had reduced the prices of their cotton below that which we had priced ours and sold this quantity of cotton * * *. When that became evident, we did not alter our export sales policy at that time, but we announced on February 1 * * * we would reduce the price of cotton or increase the subsidy, whichever way you might term it, to a point where we would become competitive, beginning August 1, and we would thereafter alter our export sales policy to enable us to competitively price cotton by reviewing periodically every 30 days the world price of cotton." (Fdg. 31, Appendix p. 63a)

Significantly, in this statement the Department of Agriculture candidly admits that it did not obey Section 203 of the Act and price cotton competitively, although midway through the 1958-1959 marketing year other countries had reduced the price of their cotton. Even more significantly, the Department of Agricul-

ture candidly stated that commencing August 1, 1959, it would obey the law and adjust the price of cotton to the world competitive level in accordance with Section 203 of the Act every 30 days. Thirty days is not "immediately" as required by Section 203, but it does show immediate price adjustment was administratively possible. No justification for this delay until after petitioners had been compelled to take down higher priced cotton was given. Thus, the Court below should have noticed the fact that defendant not only admitted not obeying the law, but asserted positively that it was practical and feasible and necessary to review the Section 203 price at least every 30 days in order to carry out the mandate of Congress. It is inconceivable that the Department of Agriculture could not have followed this same pricing formula at the time petitioners were compelled to acquire CCC-owned cotton to fulfill the July 31, 1959 export dates in their barter agreements. Petitioners were not required to presume defendant would not obey the law until after August 1. There is an irrefutable presumption that public officials will obey the law and plaintiffs were entitled to rely on the law, regardless of any other consideration.

The argument has been made that the Courts are without the power to negate execute action of the Government. *Mississippi* v. *Johnson,* 71 U.S. 475. However, this Court has held several times that conduct of Executive Branch officers, when unauthorized by statute or exceeds constitutional authority, may be subjected to judicial control. *Larson* v. *Domestic and Foreign Commerce Corp.,* 337 U.S. 682; *St. Joseph Stock Yards Co.* v. U. S., 298 U.S. 38. Thus, in a government of laws and not of men, even though the President might in the best of faith choose to ignore

Section 203 of the 1956 Act in order to promote foreign trade or friendly relations with foreign governments or even to protect American investors in foreign cotton production and sale, as asserted by Senator Eastland, this does not make it right or defensible. *Youngstown Sheet & Tube Co.* v. *Sawyer,* 343 U.S. 579. Even if the President and the State Department, acting through the Secretary of Agriculture, had relied upon a treaty as the supreme law of the land, which they did not in this case, they could not escape the power of Congress in Section 203 of the 1956 Act to require them immediately to offer cotton to plaintiffs at the world competitive price.

In ignoring the pricing criteria of Section 203 of the 1956 Act, the Secretary of Agriculture in effect undertook to evade, avoid, repeal, or nullify the clearly expressed intent and policy of Congress "directing" him to act "immediately." By executive action he arrogated to himself the power to legislate by amending Section 203 so it would read in substance that the Department of Agriculture could establish a 28.30 cents minimum on CCC-owned cotton, in lieu of the world price, or could price it competitively on an annual basis, instead of "immediately" as set out in the statute, or on a deferred basis, i.e., August 1, 1959, and every 30 days thereafter, instead of "immediately" as directed by the statute. As stated by this Court in *Youngstown Sheet & Tube Co.* v. *Sawyer,* 343 U.S. 579, 589:

> "The Founders of this Nation entrusted the lawmaking power to the Congress alone in both good and bad times."

In the *Youngstown* case this Court was dealing with an executive order by the President to seize private

property. The reasoning of the Court is applicable to the case at bar:

> "The President's order does not direct that a Congressional policy be executed in a manner prescribed by Congress—it directs that a presidential policy be executed in a manner prescribed by the President. * * * The Constitution does not subject this lawmaking power of Congress to presidential or military control." 343 U.S. 579, 588.

The superimposition of a 28.30 cents minimum price on CCC-owned cotton involved in the barter transaction between the Department of Agriculture and plaintiffs was a substantial control and alteration of Section 203 by the President. The very purpose of Congress in enacting Section 203 was to compel the Department of Agriculture to abandon immediately its policy of withholding American cotton from the international market through uncompetitive minimum pricing, as indicated in the debate in Congress. The objections to Section 203 by the State Department were considered and rejected by Congress, to promote the broader national purpose of increasing American surplus cotton exports at once. The barter device was used to stimulate private business to convert surplus diamonds into cash through an exchange for surplus export cotton. By refusing to obey Section 203, the Secretary of Agriculture not only thwarted the policy of Congress in order to further a contradictory policy of the State Department and the President, but he defeated the right of petitioners to have cotton offered to them by the CCC prior to July 31, 1959, at the world competitive price. This unlawful action of the Secretary of Agriculture resulted in an unlawful tak-

ing of plaintiffs' property by Government officers for public use. The Fifth Amendment operates even in the great emergency created by war, to protect a citizen of this country from confiscation of his contract rights without just compensation. *Brooks-Scanlon Corp.* v. *U. S.,* 265 U.S. 106. The Court below should have granted just compensation. 28 U.S.C. 1491(1). Indeed, this Court has long held that even specific relief can be had against Government officers who have "departed from a plain official duty," *Payne* v. *Central Pacific R. Co.,* 255 U.S. 228, 238, or where "the Secretary went beyond the powers conferred upon him by the statute." *Santa Fe Pac. R. Co.* v. *Fall,* 259 U.S. 197, 199. Certainly a similar principle must apply in this case.

Article II of the Constitution itself, which contains the grant of Executive power, obligates the President faithfully to execute the laws. It is implicit in every transaction with the Government that the President will do his duty. Petitioners in this case had every right to expect that CCC-owned cotton would be offered to be made available prior to July 31, 1959, the export date of their agreements, at the same price comparable qualities of cotton were being offered in substantial quantities by other cotton exporting countries. The Department of Agriculture knew midway in the 1958-1959 cotton marketing year (Fdg. 40, Appendix p. 70a) that the 28.30 cents per lb. minimum was not in line with the direction of Section 203. By the Department's own statement it could make this determination at least every 30 days (Fdg. 40, Appendix p. 70a). Why did it not do so? Simply because the State Department objected (102 Cong. Rec. 7615). This Court has said that,

> "the Government should be animated by a justice as anxious to consider the rights of the bidder as to insist upon its own." *U. S.* v. *Purcell Co.*, 349 U.S. 313, 318.

In the *Purcell* case, as in the case at bar, the contract had been accepted by the Government, but a formal document had not been signed.

The wrongness of the Secretary of Agriculture's refusal to price cotton to petitioners in accordance with Section 203 of the 1956 Act is abundantly clear. In May 1959, the Comptroller General made his annual report to Congress on the operations of the Commodity Credit Corporation. (See Fdg. 34, Appendix p. 64a) Pertinent portions of the report indicate that the Secretary of Agriculture had knowledge in November 1958 that CCC-owned cotton was priced far above the world price, and that his action was unlawful. This was well before the July 31, 1959 export date of petitioners' barter agreements. Under the heading, "Export Prices for Cotton Have Not Been Competitive In World Market," the Comptroller General reported as follows (pp. 42-44, Report to Congress, Audit of CCC, Fiscal 1958, U.S. General Accounting Office, May 1959):

> *"Export prices for cotton have not been competitive in the world market*
>
> Prices at which Commodity Credit Corporation has made cotton available for export for the 1958-59 marketing year have been maintained at levels in excess of competitive world prices. This action, in our opinion, does not comply with the requirements of Section 203 of the Agricultural Act of 1956 (7 U.S.C. 1853).

"Section 203 of the Agricultural Act of 1956 provides in pertinent part, as follows:

"In furtherance of the current policy of the Commodity Credit Corporation of offering surplus agricultural commodities for sale for export at competitive world prices, the Commodity Credit Corporation is directed to use its existing powers and authorities immediately upon the enactment of this act to encourage the export of cotton by offering to make cotton available at prices not in excess of the level of prices at which cottons of comparable quantities are being offered in substantial quantity by other exporting countries * * *. Such quantities of cotton shall be sold as will reestablish and maintain the fair historical share of the world market for United States cotton, said volume to be determined by the Secretary of Agriculture.' "

On April 23, 1958, the Department of Agriculture announced that during the 1958-59 marketing year Government-owned upland cotton would again be available for sale for export on a competitive bid basis and that this program would be supplemented by a payment-in-kind program to encourage exports from commercial stocks. Under the payment-in-kind program, exporters of upland cotton from normal trade sources earn a subsidy for each pound of cotton exported. The subsidy so earned must be used by the exporters to purchase additional cotton from CCC. August 1, 1958, was established as the beginning date for exports under both programs.

On May 12, 1958, the first bids under the 1958-1959 competitive sales program were opened by CCC and a minimum acceptable price of 28.30 cents a pound for middling 1-inch cotton at average location was established. On May 29, 1958, a payment rate of 6½ cents a pound under the

payment-in-kind program was announced. The announcement also stated: "That rate of 6½ cents per pound will be effective until changed *and will be subject to change without prior notice.*" (Emphasis added.) At the time of our review, February 1959, neither the minimum acceptable bid price of 28.30 cents nor the payment-in-kind subsidy rate of 6½ cents had been changed since they were originally announced.

Through February 2, 1959, the Department of Agriculture had announced the following transactions under its 1958-59 cotton export program:

	No. of bales
Sales by competitive bids	1,941,287
Registrations under payment-of-kind program	232,525
Total	2,173,812

Recent publications by the Department of Agriculture state that United States exports are not likely to exceed 3.5 million bales in the 1958-59 marketing year, compared with 5.7 million bales in 1957-58, and that world trade in cotton is estimated to be 13.1 million bales, a decline of 1.1 million bales from the 14.2 million bales exported in 1957-58. Based on these statements, the decline in United States exports during the year will be approximately twice as great as the decline in world exports.

While the prices at which CCC has made cotton available for export have remained fixed, world market prices have declined according to publications of the Foreign Agricultural Service and the Agricultural Marketing Service of the Department of Agriculture. The November 1958 issue of "The Cotton Situation," a publication by the Agricultural Marketing Service, stated in part:

"Foreign spot prices have declined sharply in recent months and in October were well below the 1957-58 average. * * * Landed prices, c.i.f. major import markets, clearly indicate that nearly all higher grade foreign growths are currently priced below comparable U.S. qualities. This reverses the situation which prevails during most of the past 2 marketing years. Except for the lower grades, U.S. export prices currently average above a year ago."

A February 1959 publication of the Foreign Service entitled "Foreign Crops and Markets" states in part:

"In recent months, most importing countries have shifted substantially from U.S. cotton to lower priced foreign growths."

In a letter dated May 8, 1959, commenting on our report, the President of CCC, advised us as follows:

"We do not agree that the requireemnts of Section 203 of the Agricultural Act of 1956 have not been met. For the three marketing years subsequent to the enactment of this legislation, exports of cotton will have averaged over five million bales per year, which is in excess of the amount indicated in the legislative history as being considered the historical share of the world market for U.S. cotton. Also, in testimony before the Subcommittee of the House Committee on Appropriations for 1960, Mr. Robert L. Farrington, General Counsel, U.S. Department of Agriculture, made the following statement:

'Well, I just wanted to make the point, Mr. Chairman, that the word 'annually' doesn't appear anywhere in this section that we have been referring to and if the Secretary finds on the basis of the sale of some 15 million bales

> of cotton in 3 years, that he has reestablished and maintained the fair historical share of our market of cotton, I think the statute has been complied with.'
>
> "The Secretary and other officials of the Department also discussed this subject at some length before this Subcommittee.
>
> "This testimony is found in Part I of the hearings, pages 8 to 28."
>
> In our opinion, the failure of CCC to make cotton available for export at prices competitive in the world market during the 1958-58 marketing year is contrary to Section 203 of the Agricultural Act of 1956."

While the Secretary of Agriculture had discretion under Section 203 to determine whether he would barter any CCC-owned cotton at all—depending on whether the U. S. had maintained its fair share (5 million bales annually) to the world market. Section 203 did *not* give him discretion as to price, he must offer cotton at only one price, i.e. the world competitive price. At the time plaintiffs were required to take down CCC-owned cotton, only one-half of the U.S. fair share had been exported, and defendant had knowledge exactly as to the world price. In short, defendant had no reasonable excuse to fail to offer cotton to plaintiffs at the "competitive world price" set out in Section 203 of the 1956 Act. It was a simple administrative matter so to do. The important point for the Court to consider in the above report to Congress is the flat statement on page 44 that "In our opinion, the failure of CCC to make cotton available for export at prices competitive in the world market during the 1958-1959 marketing year is contrary to Section 203

of the Agricultural Act of 1956." The 1958-1959 year commenced on August 1, 1958, and ended on July 31, 1959. It was the year within which petitioners had to buy and export CCC-owned cotton. Defendant had no authority to refuse to make cotton available at the world competitive price until August 1, 1959, as indicated in Finding 28(b) Appendix p. 61a, and to do so was an arbitrary disregard of Section 203. This is particularly so since Section 110 of the Agricultural Act of 1958 reaffirmed the directive of Section 203 of the 1956 Act by stating "Nothing in this Act shall be construed to affect or modify the provisions of Section 203 of the Agricultural Act of 1956." (P.L. 85-835)

Surely, there was an obligation on the part of CCC to petitioners to comply with Section 203. The Federal Government is a government of limited, enumerated and delegated powers. *McCulloch* v. *Maryland,* 4 Wheat. 316, 4 L. Ed. 579. This Court cannot permit the Secretary of Agriculture to defeat the reasonable expectations of the petitioners in this case to receive CCC-owned cotton equivalent in exchange value to the industrial diamonds bartered by them in exchange for such cotton, priced in accordance with the clear and unmistakable standards set by Congress in Section 203 of the 1956 Act. They changed positions to their detriment in fair reliance on good faith compliance with the law by defendant. The interposition of a price of 28.30 cents per lb., approximately 6 cents per lb. above the Section 203 price, compelled petitioners to subsidize the export of cotton by absorbing the difference between 28.30 cents per lb. and 23¼ cents per lb., the world price. They were arbitrarily and capriciously denied the benefit of the bargain they had

made, and which Congress intended them to make. Their property was taken. *U. S.* v. *Causby,* 328 U.S. 256; *U. S.* v. *Dickinson,* 331 U.S. 745; *Brooks-Scanlon Corp.* v. *U. S.,* 265 U.S. 106.

The error of the court below is made more egregious by the fact that in other contexts it has recognized the principle of the *Youngstown* case, *supra:*

> "It seems strange that department officials are sometimes reluctant to follow the simply requirements of an Act of Congress. * * * The Congress is the policy-making branch of our Government." *Stringer* v. *U. S.,* 117 Ct. Cl. 30, 90 F. Supp. 375, 380.

To the same effect, the late Judge Clark of the U. S. Court of Appeals for the District of Columbia Circuit ruled in *Reynolds et al.* v. *Lovett,* 91 U.S. App D.C. 276, 210 F. 2d 181, in a very pungent and persuasive statement, in a concurring opinion, as follows:

> "Can the Secretary of the Navy, or any other administrative official, deliberately flout the will of Congress clearly and without ambiquity expressed in the law of the land? * * * Counsel for appellee stated that the statute was not followed because 'the Secretary of the Navy had changed *his* policy.' The Secretary changed *his* policy, forsooth. Not one word was forthcoming as to any change in the policy of Congress, which is the law. In my judgment, the defiance of the law and disregard of the will of Congress on the part of administrative bureaucrats is a greater menace to our institutions than the threat of the atomic bomb'.'

Even if it be argued that the Secretary of Agriculture might have some discretion under Section 203 of

the 1956 Act, which certainly is not discernible from a reading of the section, the law is clear that a Government official is bound to exercise authorized discretion reasonably and in a "non-arbitrary" manner. *Joint Anti-Fascist League* v. *McGrath,* 341 U.S. 123; *Crosley Corp.* v. *Westinghouse,* 130 F. 2d 474, 475; *Puget Sound Power* v. *Public Utilities District,* 123 F. 2d 286, 293.

In other contexts the court below has repeatedly held that the decisions of public officers cannot be capricious. E.g., *Betts* v. *U. S.,* 145 Ct. Cl. 530, 535, which held:

> "A public officer in making decisions affecting the rights of citizens, is not free to act capriciously, at least unless the legislature has in plain terms granted him that arbitrary power. A decision contrary to all the evidence, and for which, even on post audit, no reason can be given except an irrelevant reason, cannot be characterized as other than capricious. As such, it deserves only to be ignored and we ignore it."

The decision of the Secretary of Agriculture in the case at bar, being unlawful on its face, as determined by the Comptroller General, can only be characterized as "capricious" within the meaning of the *Betts* decision.

The Supreme Court of the United States has said the jurisdiction of the court below is to be liberally construed. *U. S.* v. *Shaw,* 309 U.S. 495, 501.

It has also said:

> "The nation, speaking broadly, owes a 'debt' to an individual when his claim grows out of general principles of right and justice." *U. S.* v. *Realty Company,* 163 U.S. 427.

The entire spirit and atmosphere of decisions of the U. S. Court of Claims should reflect the policy of Congress to protect the rights of citizens against overreaching, errors, arbitrariness, and other unfortunate by-products of an ever-increasingly big central Government.

In legal claims such as petitioners assert herein, there must be some element of equitableness by the court below, as recognized by the Supreme Court when it spoke of "general principles of right and justice" in the *Realty Company* case, cited above.

WHEREFORE, the premises considered, petitioners submit that on the basis of the opinion of the court below, the findings therein, and statutory language of Section 203 of the Agricultural Act of 1956, they are entitled to the grant of a writ of certiorari in accordance with the various judicial decisions cited herein.

Respectfully submitted,

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